ARE BONUSES TO SOLDIERS AND SAILORS GIVEN FOR A PUBLIC PURPOSE? — A tax may only be levied for a public purpose.[1] The government may take its citizens' property for its own requirements, but it may not take from one to give to another. However, like most general principles, the doctrine of public purposes is easy to state but hard to apply. In each case whether a tax is levied and the proceeds spent for a public purpose depends upon how far the public will be ultimately benefited. For instance, the government may pay salaries to its officials, but it may not loan money to private businesses.[2] In the former case the public is directly benefited; in the latter, the ultimate public profit in the increased power of the private concerns to pay taxes is considered too remote. In one case the private benefit is incidental; in the other it is primary. But certain classes of appropriations are upheld where the public is only indirectly and indefinitely benefited. Such are gifts to charity.[3] The promotion of patriotism is well recognized as a public purpose.[4] And the legislature has generally been allowed a wide discretion in satisfying the moral obligations of the state, either where individuals have relied upon a promise extended by the government,[5] or where civil employees have been injured, financially [6] or physically,[7] in the course of their service.

Gratuities to soldiers and sailors constitute an intermediate class of public appropriations which aroused considerable discussion at the time of the Civil War and are once again confronting the courts. If these gratuities take the form of bounties to encourage enlistments, they are clearly valid.[8] Such bounties were very common in the Civil War, where each town had to raise a fixed quota either by enlistment or by draft. There was a definite public purpose in relieving other citizens from the draft and in aiding in the defense of the nation. A second type

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[1] Loan Association *v.* Topeka, 20 Wall. (U. S.) 655 (1874). This principle is either actually embodied or has been read into the Fourteenth Amendment and every state constitution. See 21 HARV. L. REV. 277.

[2] Loan Association *v.* Topeka, *supra;* Cole *v.* La Grange, 113 U. S. 1 (1884); Allen *v.* Inhabitants of Jay, 60 Me. 124 (1872). On the other hand, subsidies to railroads have generally been upheld on the ground that they constitute public highways. See GRAY, LIMITATIONS OF TAXING POWER, § 194, note 34, for a collection of cases.

[3] Hager *v.* Kentucky Children's Home Society, 119 Ky. 235, 83 S. W. 605 (1904); State *v.* Edmondson, 89 Ohio St. 351, 106 N. E. 41 (1914); Denver & R. G. Ry. *v.* Grand County, 170 Pac. (Utah) 74 (1917); State *v.* Nelson County, 1 N. D. 88, 45 N. W. 33 (1890). See COOLEY ON TAXATION, 2 ed., 124. *Contra*, Lowell *v.* Boston, 111 Mass. 454 (1873).

[4] United States *v.* Gettysburg Electric Ry., 160 U. S. 668 (1896); Daggett *v.* Colgan, 92 Cal. 53, 28 Pac. 51 (1891); Parsons *v.* Van Wyck, 56 App. Div. 329, 67 N. Y. S. 1054 (1900). See JUDSON ON TAXATION, 2 ed., § 386.

[5] United States *v.* Realty Co., 163 U. S. 427 (1896); Woodall *v.* Darst, 71 W. Va. 350, 77 S. E. 264 (1912).

[6] Leonard *v.* Inhabitants of Middleborough, 198 Mass. 221, 84 N. E. 323 (1908); Earle *v.* Commonwealth, 180 Mass. 579, 63 N. E. 10 (1910). See 21 HARV. L. REV. 625.

[7] Munro *v.* State, 223 N. Y. 208, 119 N. E. 444 (1918).

[8] Taylor *v.* Thompson, 42 Ill. 1 (1866); Commissioners of Vermillion County *v.* Hammond, 83 Ind. 453 (1882); Lowell *v.* Oliver, 8 Allen (Mass.), 247 (1864); Crowell *v.* Hopkinton, 45 N. H. 9 (1863); Cass Township *v.* Dillon, 16 Ohio St. 38 (1864); Speer *v.* Blairsville, 50 Pa. St. 150 (1865); Brodhead *v.* City of Milwaukee, 19 Wis. 624 (1865). Bounties to drafted men were upheld in Booth *v.* Town of Woodbury, 32 Conn. 118 (1864).

of these gratuities that has never been questioned is the federal pension to those who have been disabled in the service of the United States.[9] These pensions can be upheld [10] on two grounds: because they were promised before the war [11] and so tended to encourage enlisting, and because the government is morally bound to aid those men who relied on its promise or were injured in its service. A third class of gratuities is represented by a recent Wisconsin statute,[12] upheld in *State* v. *Johnson*,[13] granting a bonus to every soldier or sailor who served in the late war on his discharge.[14] These bonuses were not promised before the war, nor are they limited to those who have been disabled. They cannot, therefore, be supported on the same grounds as the bounties to encourage volunteers or the federal pensions. It is not a case of charity,[15] since the bonuses are given to rich and poor alike. If the Wisconsin statute can be sustained at all, it must be on the ground that it tends to promote patriotism by encouraging others to follow the example of those who served.[16] But it is a far cry to argue that the state's generosity will result in more volunteers for the next war,— such a public benefit is altogether too remote. In any case, from a pecuniary point of view there would be every reason to follow the example of the profiteer, no matter how large the bonus. As a means of encouraging patriotism a medal would seem more effective and permanent. In short it is difficult to see how such a statute will benefit the public in any way, directly or indirectly. It looks very much as if the state were taking from one citizen to give to another. It must, of course, be remembered that taxation is a prerogative of the legislature and that it should be sus-

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[9] See 37 STAT. AT L. 112–113, 12 STAT. AT L. 566–569, 1 STAT. AT L. 95, 129, 244.

[10] United States *v.* Hall, 98 U. S. 343 (1878); 1 Abb. 74 (1867). *Cf.* O'Dea *v.* Cook, 176 Cal. 659, 169 Pac. 366 (1917); People *v.* Abbott, 274 Ill. 380, 113 N. E. 696 (1916), in which police pensions were upheld as part compensation for services.

[11] The Continental Congress originally declared its intention to grant pensions on August 26, 1776. See 5 JOURNALS OF CONTINENTAL CONGRESS, 702–705.

[12] 1919 WISCONSIN LAWS, c. 667.

[13] 175 N. W. 589 (Wis.) (1919). For a more complete statement of the facts, see RECENT CASES, p. 871.

[14] Massachusetts has passed a similar act. See 1919 MASSACHUSETTS LAWS, c. 283. Other states have provided for the distribution of medals or certificates. See 1919 DELAWARE LAWS, 673; 1919 NORTH CAROLINA LAWS, 503; 1919 NEBRASKA LAWS, 1030; 1919 NEW JERSEY LAWS, 711; 1919 NEW YORK LAWS, 220; 1919 VERMONT LAWS, 236. Others have exempted veterans from certain taxes. See 1919 CALIFORNIA STAT., 305; 1919 NEW JERSEY LAWS, 86, 91. Others have provided for free tuition. See 1919 MINNESOTA LAWS, 362; 1919 OREGON LAWS, 809; 1919 WASHINGTON LAWS, 129. And two states have urged Congress to provide a bonus. See ARIZONA LAWS, 397; 1919 INDIANA ACTS, 870. It is not stated whether financial or constitutional reasons prevented the latter two states from providing for their veterans themselves.

Compare 40 STAT. AT L. 1151, giving each soldier or sailor $60 on discharge. These bonuses may be justified as part compensation, a sort of "month's notice," or as an allowance to buy civilian clothes. A similar allowance is made for uniforms to those entering the service.

[15] Compare Bosworth *v.* Harp, 154 Ky. 559, 157 S. W. 1084 (1913); Board of Education *v.* Bladen County, 113 N. C. 379, 18 S. E. 661 (1893).

[16] See Opinion of the Justices, 211 Mass. 608, 98 N. E. 338 (1912), holding that a bounty as such was bad, but a testimonial to encourage patriotism was valid. The court further held that the declaration of purpose in the statute practically determined which the gratuity was.

tained by the courts unless clearly unconstitutional.[17] It is one thing for the courts to consider a statute unwise and quite another to hold that the legislature has overstepped the limits of its discretion. But, as held by the slight weight of authority,[18] there seems to be no sound ground upon which a bonus statute can be supported.

ESTOPPEL OF AN ATTORNEY TO ACT AGAINST HIS CLIENT. — In few fields has human inability to serve two masters been more clearly recognized or more scrupulously regarded than in the relation of attorney and client. The duty of an attorney to abstain from inconsistent employment was recognized very early in our law [1] and, to the credit of the profession, few reported cases are found which involve a departure from professional faith and duty.[2] Nor has this obligation been restricted merely to the duration of the relation.[3] While the fact alone that he has once acted as counsel for a man will not bar an attorney from thereafter representing that man's adversary,[4] this is true only when such service is consistent with, and not hostile to, the interests of the former.[5] The test of consistency is ". . . whether accepting the new retainer will require him, in forwarding the interests of his new client, to do anything which will injuriously affect his former client in any matter in which he formerly represented him, and also whether he will be called upon, in his new relation, to use against his former client any knowledge or information acquired through their former connection." [6] If the new service is inconsistent, he cannot act. And this rule is applicable to criminal as well as to civil proceedings. Thus, one who acted as counsel for a plaintiff in an action for malicious prosecution is disqualified to serve as prosecuting attorney against him upon a subsequent indictment for the alleged crime which was involved in that action.[7] Conversely, a defendant in a criminal prosecution cannot be represented by an attorney who had previously, as solicitor-general of the state, instituted the proceeding against him.[8] The recent

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[17] Jones *v.* Portland, 245 U. S. 217 (1917). See 21 HARV. L. REV. 277.

[18] Mead *v.* Acton, 139 Mass. 341, 1 N. E. 413 (1885); Bush *v.* Board of Supervisors, 159 N. Y. 212, 53 N. E. 1121 (1899); Beach *v.* Bradstreet, 85 Conn. 344, 82 Atl. 1030 (1912). See 26 HARV. L. REV. 92. *Contra*, Brodhead *v.* City of Milwaukee, 19 Wis. 624 (1865); State *v.* Handlin, 38 S. D. 550, 162 N. W. 379 (1917). It should be noted that Brodhead *v.* City of Milwaukee, *supra*, relied principally upon Speer *v.* Blairsville and Booth *v.* Town of Woodbury, *supra*, note 8, neither of which seem in point.

[1] MIRROUR OF JUSTICES, chap. 2, sec. 5.

[2] Hatch *v.* Fogerty, 40 How. Pr. 492, 504 (1871).

[3] *In re* Boone, 83 Fed. 944 (1897); People *v.* Gerold, 265 Ill. 448, 107 N. E. 165 (1914); Hatch *v.* Fogerty, *supra*.

[4] Purdy *v.* Ernst, 93 Kan. 157, 143 Pac. 429 (1914); Messenger *v.* Murphy, 33 Wash. 353, 74 Pac. 480 (1903).

[5] *In re* Boone, *supra;* Purdy *v.* Ernst, *supra*. See 1 FERGUSON, IRISH PRACTICE, 57, 58.

[6] *In re* Boone, *supra*, 952. See also CANONS OF ETHICS, AM. BAR ASS., Sec. II (6).

[7] State *v.* Rocker, 130 Ia. 239, 106 N. W. 645 (1906). And see Wilson *v.* State, 16 Ind. 392 (1861).

[8] Gaulden *v.* State, 11 Ga. 47 (1851).